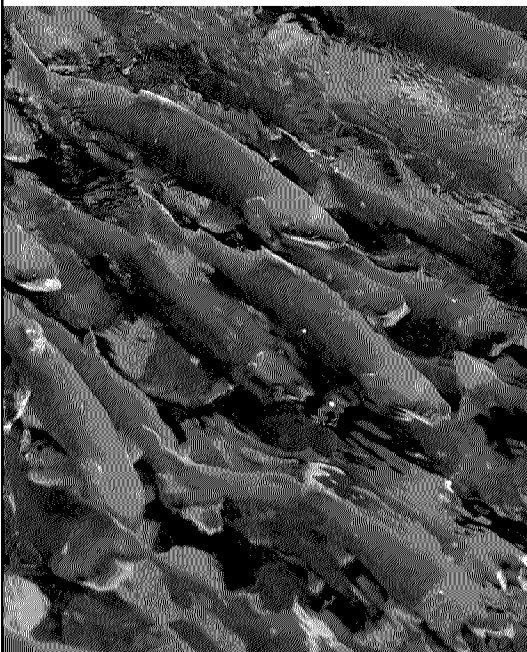




# Oregon CZARA

## **Tillamook Bay Watershed Council February 25, 2014**



EPA Region 10, OWW and  
Oregon DEQ



# WHAT WE WILL DISCUSS

- Background on CZARA & Oregon's Coastal Nonpoint Program
- Oregon Settlement Agreement and Program Decisions
- Remaining Issues to Address
- The Path Forward

# Coastal Zone Act Reauthorization Amendments (CZARA)



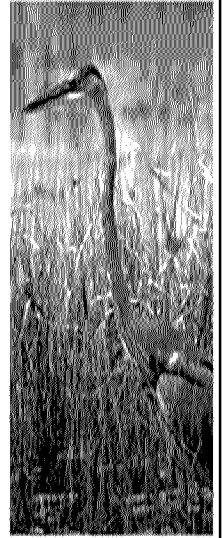
- Enacted Nov. 5, 1990; Jointly administered by EPA & NOAA; EPA published (g) guidance in Jan. 1993
- Applies to coastal states and territories that have approved Coastal Zone Management Programs under CZMA (which NOAA administers)
- Originally 29 states & territories; 5 more added later;
- CZARA = CZMA Section 6217, which requires states in NOAA's CZMP to develop coastal nonpoint pollution control programs (CNPCPs)

# CZARA's Purpose & Mandate



- States must “prepare and submit” to NOAA & EPA CNPCPs that “shall be closely coordinated with State & local WQ plans & programs developed pursuant to sections 208, 303, 319, & 320” of CWA.
- Specifically, “State programs shall serve as an update and expansion of the State NPS management program developed under section 319”
- Technology-based to maximize pollution reduction & economically achievable
- 56 MMs across these categories: **Agriculture, Urban, Forestry, Marinas, Hydromodification, Wetlands**
- *Each state shall also contain... additional management measures... necessary to achieve and maintain applicable water quality standards... and protect designated uses.*

# CZARA's "Penalty Provision"



- Statute calls for EPA Administrator to withhold section 319 funds for any coastal state that "has failed to submit an approvable program"
  - ...For FY 1999 and each fiscal year thereafter, 30 percent of the amount awarded for FY 1998 or other preceding fiscal year.
  - The Administrator shall make amounts withheld under this paragraph available to States having programs approved pursuant to this subsection.
- Similar clause for withholding NOAA's 306 funds



# CZARA Progress in Oregon

- 1995 – Oregon submitted its Coastal Non-point Source Control Program to NOAA/EPA
- 1998 – NOAA/EPA completes review and identifies issues to be addressed
- 2004 – NOAA/EPA provides further review
- 2007-Oregon submits revisions
- 2008- NOAA/EPA provide further review
- Note: Consistency in Findings

# Oregon Lawsuit Overview



- NWEA sued NOAA and EPA for failing to fully approve (without conditions) or disapprove OR's CNPCP. The parties settled Summer 2010.
- To provide a basis for settlement, ODEQ committed to:
  - Implement a TMDL approach with enforceable load allocations for all significant NPS including forestry – Mid-Coast TMDL
  - This enforceable approach included identifying BMPs that, if implemented, provide a safe harbor from enforcement
  - Administrative orders for significant sources
- Agreement established timeline with milestones to approve or disapprove OR's CNPCP by May 2014 .



# Oregon SA: Critical Deadlines

- Dec. 31, 2012, NOAA-EPA provided ODEQ an initial assessment of the viability of its TMDL strategy for achieving WQS and addressing OR's remaining forestry conditions
  - NOAA-EPA issued Dec. 2012 letter stating that OR's proposed strategy was not likely to achieve WQS or adequately address the outstanding forestry conditions
- Dec. 20, 2013 NOAA-EPA issued a public notice for comment on proposed disapproval of OR's CNPCP. Intent to disapprove requires 90-day public comment period (by March 21, 2014)
- EPA and NOAA must issue a final decision on May 15, 2014





# Oregon's Unmet Conditions

- **Additional MMs for Forestry**
  - Increase protections for medium, small fish-bearing streams & non-fish-bearing streams
  - Increase protections for high risk landslide prone areas
  - Address impacts from forestry roads, esp. legacy roads
  - Ensure adequate stream buffers for application of certain chemicals, esp. aerial pesticide spraying on steep slopes
- **New Development** – “reduce average annual TSS loads by 80%”—post-construction
- **OSDS** – “Inspect OSDS at a frequency adequate to ascertain whether OSDS are failing”



# Oregon's Unmet Conditions

- New Development – reduce average annual TSS loads by 80% - post construction
- OSDS – Inspect OSDS at a frequency adequate to ascertain whether OSDS are failing



# Oregon Unmet Conditions

## Additional Forestry Measures

- Increase protections for medium, small & non-fish-bearing "Type N" streams
- Increase protections for landslide prone areas
- Address impacts from forestry roads, esp. legacy roads
- Ensure adequate stream buffers for application of certain chemicals, esp. aerial pesticide spraying on steep slopes



# Pesticide Background

- In 1998, NOAA/EPA placed a condition on Oregon's CNPCP requiring adequate buffers for aerial application of herbicides for non-fish-bearing streams
- NMFS (part of NOAA) has issued several Biological Opinions requiring a change to pesticide labels to provide greater protection of salmon
- EPA is still exploring options with NOAA fisheries on a suitable solution



# Agriculture Issues

- EPA-NOAA's interim 2004 determination was that OR had met the Ag MMs based on expectations that OR SB 1010 plans and associated administrative rules would require farmers to adopt specific BMPs for Ag activities to ensure WQS were being met.
- More recently EPA-NOAA have received public input expressing concerns with OR's programs for meeting the Ag MMs. In June 2011 NOAA Fisheries determined that OR Coastal Coho still warranted threatened species status, due to habitat degradation related to ag practices and other factors
- EPA-NOAA Dec. 20, 2013 public notice invites public comment on OR's Ag program.



# Options following Notice of Intent to Disapprove

- If information received during the public comment process provides a basis for addressing outstanding management measures, NOAA/EPA will provide additional opportunity for public comment on the new information and a proposed full approval decision on the state CNPCP
- If OR does not provide a basis for approval by 5/15/2014 the Agencies disapprove OR after consideration of public comment.
- If OR adopts measures to address the outstanding issues after the 5/15/2014 decision, EPA/NOAA will review the State submittal and proposed a new decision based on the State submittal.